

April 11, 2001

**STATE WATER RESOURCES CONTROL BOARD
SACRAMENTO, CALIFORNIA**

April 26, 2001

ITEM 12

SUBJECT

CONSIDERATION OF ORDER REGARDING STAY AND DISMISSAL OF PHASE 8 OF
THE BAY-DELTA WATER RIGHTS HEARING AND AMENDING REVISED DECISION
1641

DISCUSSION

The subject of Phase 8 of the Bay-Delta Water Rights Hearing is a determination of the responsibilities of parties to meet flow objectives in the 1995 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (1995 Bay-Delta Plan). The affected parties are the holders of post-1914 water rights (1) whose water rights might be amended based on evidence gathered in Phase 8, and (2) whose responsibilities have not already been determined based on evidence regarding settlement agreements proposed in Phases 2 and 4.

The SWRCB commenced Phase 8 on April 11 and 12, 2000, with a session to receive evidence on a settlement agreement to resolve the responsibilities of water right holders on the Bear River. The Board issued a notice on April 19, 2000, that it would resume Phase 8 on August 9, 2000. By subsequent notice, the Board postponed the August 9 resumption date to give the parties time to negotiate a settlement agreement.

On January 11, 2001, the SWRCB conducted a workshop on two topics: the schedule for the remainder of Phase 8 and a status report by the parties on their efforts to negotiate an allocation of the remaining responsibilities to meet the flow objectives.

At the January 11 workshop, some of the parties, representing export interests and Sacramento River watershed interests, presented a draft agreement. The parties presenting the draft agreement requested, at the workshop, that the SWRCB issue a stay of Phase 8 to give them time to develop and reach agreement on work plans for developing water supply projects. On March 7, 2001, and on April 4, 2001, the SWRCB conducted Board meetings to consider adopting earlier drafts of this order.

At the April 4, 2001, meeting, the parties presented an executed settlement agreement to the SWRCB. Following extensive comments by the parties and questions from the Board members, the SWRCB directed staff to make further changes to the draft order. The proposed order is based, not on the agreement, but on an independent commitment of the Department of Water

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Resources (DWR) and the United States Bureau of Reclamation (USBR) to meet the objectives in the 1995 Bay-Delta Plan for an interim period and to accept an indefinite extension of Conditions 1 and 2 in D-1641. The proposed order stays Phase 8 for a period of eighteen months and automatically dismisses Phase 8 at the end of eighteen months, unless the SWRCB receives a request from the DWR or the USBR to resume Phase 8. Unless the SWRCB renews Conditions 1 and 2 pursuant to a further order after notice and opportunity for hearing, Conditions 1 and 2 will expire two years after the DWR or the USBR requests a hearing.

POLICY ISSUE

Should the SWRCB adopt the proposed water right order formally staying and dismissing Phase 8 of the Bay-Delta Water Rights Hearing, subject to terms and conditions?

FISCAL IMPACT

This activity is budgeted within existing resources and no additional fiscal demands will occur due to approving this item.

RWQCB IMPACT

None.

STAFF RECOMMENDATION

Staff recommends that the Board adopt the proposed water right order.